

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 15-2930

JAMES MARKSON,

APPELLANT,

V.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before SCHOELEN, *Judge*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On February 22, 2016, the appellant filed his brief. On March 30, 2016, the appellant filed an opposed motion for leave to file an addendum to his brief. In his motion, the appellant asserts that (1) the addendum will address "critical facts" contained in a rating decision issued by the New York City, New York, regional office on February 23, 2016, pursuant to the Board of Veterans Appeals (Board) remand order, dated April 10, 2015; (2) although the February 2016, rating decision is not in the Record Before the Agency (RBA), both the appellant and the Secretary are under an affirmative duty to notify the Court of developments that could deprive the Court of jurisdiction or otherwise affect its decision; (3) if allowed, the addendum will show that the VA determined that the appellant does not have a diagnosis of left ventricular hypertrophy, which he asserts is inconsistent with the Board's finding in the decision on appeal that attributed the appellant's symptoms of shortness of breath, fatigue, and weakness to his now undiagnosed left ventricular hypertrophy, rather than his hypertension; and (4) without these newly determined facts, the Court will be unable to render a fully informed and fair decision.

On April 11, 2016, the Secretary filed a response in opposition to the appellant's motion for leave. In his response, the Secretary asserts that the Court should deny the appellant's motion because the Court's review is limited to the record of proceedings before the Board, which clearly did not include the February 23, 2016, rating decision that postdates the April 2015 Board decision on appeal.

This Court is precluded by statute from considering any material which was not contained in the "record of proceedings before the Secretary and the Board." 38 U.S.C. § 7252(b); *Rogozinski v. Derwinski*, 1 Vet.App. 19 (1990) (review in the Court shall be on the record of proceedings before

the Secretary and the Board); *see also Obert v. Brown*, 5 Vet.App. 30, 32 (1993) (this Court is a court of review that may consider only evidence that was in the record and before the Board in its adjudication). Moreover, although the Court held in *Solze v. Shinseki*, 26 Vet.App. 299, 301 (2013), that parties before the Court "are under a duty to notify the Court of developments that could deprive the Court of jurisdiction or otherwise affect its decision," the appellant fails to demonstrate how the February 2016 rating decision has any bearing on the Court's jurisdiction or whether, in April 2015, the Board erred based on the evidence of record at the time of its decision.

On consideration of the foregoing, it is

ORDERED that the appellant's motion for leave to file an addendum to his brief is denied. It is further

ORDERED that the Secretary, within 30 days after the date of this order, file his brief.

DATED: April 26, 2016

BY THE COURT:



MARY J. SCHOELEN
Judge

Copies to:

Michael Marino, Esq.

VA General Counsel (027)